179 (2)

No. 10-773

In The

Supreme Court of the United States

HERMANN GEIER, *ET AL.*,

Petitioners,

v.

OMNIGLOW CORPORATION, *ET AL.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, respondents state as follows:

Respondent Siemens Transportation Systems, Inc. is a wholly-owned subsidiary of Siemens Industry, Inc., which is a wholly owned subsidiary of Siemens Corporation. Siemens Transportation Systems, Inc. is an indirect, wholly-owned subsidiary of Siemens AG. No other company owns 10% or more of the stock of Siemens Transportation Systems, Inc.

Respondent Bosch Rexroth Corporation is a wholly-owned subsidiary of Robert Bosch North American Corporation, incorporated in Delaware. Robert Bosch North American Corporation is a wholly-owned subsidiary of Robert Bosch Industrieanlagen GmbH, a German corporation. Robert Bosch Industrieanlagen GmbH is a wholly-owned subsidiary of Robert Bosch GmbH, another German corporation.

Respondent Hydac Technology Corp. is a Pennsylvania Corporation, which is a wholly owned subsidiary of Hydac Technology Limited, a United Kingdom Operating Company. Hydac Technology Limited is 100% owned by Hydac Limited, a UK Holding Company. Hydac Limited is 100% owned by BUV Beteiligungs-und Verwaltungsgesellschaft mbH, a German entity, which is 100% owned by INTHOL Beteiligungs- und Verwaltungsgesellschaft mbH, a German entity.

Omniglow Corporation, an original defendant, was purchased by Respondent Cyalume Technologies Inc. in December 2006. In December of 2008, Cyalume Technologies Inc. was acquired by Vectorinterest Security Acquisitions Corp., which changed the corporate name to Cyalume Technologies Holdings Inc. No other company owns more than 10 percent of the stock of Cyalume Technologies Holdings, Inc.

There is no parent or publicly held company that owns 10% or more of Respondent Exxon Mobil Corporation's stock.

Respondent Wika Instrument Corporation has the following parent corporation: WIKA Holding Corporation. There are no publicly held corporations that own 10% or more of stock in Wika Instrument Corporation.

BRIEF IN OPPOSITION

Petitioners, none of whom are residents or citizens of the United States, and many of whom are Austrian, seek to assert in United States courts claims arising out of an accident in Austria involving a train manufactured and designed by Austrian companies. The District Court, whose judgment was affirmed by the Court of Appeals without dissent, properly exercised its discretion and dismissed Petitioners' claims based on the doctrine of *forum non conveniens* in favor of an Austrian forum.

The Petition is far from a model of clarity. It is so replete with inaccuracies, incoherent statements, and misstatements of fact and law as to make correction and clarification of such errors an unduly expensive and burdensome task that would merely create a distraction from the straightforward reasons for denying the writ.

What is clear is that Petitioners point to no "compelling reason" why this Court should weigh in on the particular circumstances of this case. Sup. Ct. R. 10. Both the District Court and the Second Circuit correctly applied well-settled principles regarding the doctrine of *forum non conveniens*. As the Second Circuit stated, the District Court "properly found that plaintiffs' choice of forum was entitled to 'very little deference' based on (1) the fact that they chose to litigate in a foreign forum and (2) the 'strong inference that forum shopping motivated' their decision to sue in the United States." *Geier v. Omniglow Corp.*, 357 Fed. Appx. 377, 379-80 (2d Cir. 2009) (quoting *In re Ski Train Fire in Kaprun Austria on November 11, 2000*, 499 F. Supp. 2d 437,

444-46 (S.D.N.Y. 2007) and citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981) ("'When the plaintiff is foreign' the assumption that its chosen U.S. forum is convenient 'is much less reasonable.'")).

In addition, the District Court carefully weighed the private and public convenience factors set forth by this Court and frequently applied by the lower courts. *Piper Aircraft*, 454 U.S. at 257-61; *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947). Regarding the private convenience factors, the Second Circuit found "no error" in the District Court's determination that "'[n]o relevant events occurred in the United States, no relevant evidence is located in this country, and most key defendants and key witnesses (including most plaintiffs) are found in Austria or elsewhere in Europe.'" *Geier*, 357 Fed. Appx. at 380 (quoting *In re Ski Train Fire*, 499 F. Supp. 2d at 447). Nor did the Second Circuit find error in the District Court's determination that the public convenience factors weighed in favor of an Austrian forum where "'Austria's interest in all Kaprun-related litigation is far greater than New York's interest'" and "'it is a virtual certainty that Austrian law will govern most issues in these cases.'" *Geier*, 357 Fed. Appx. at 380-81 (quoting *In re Ski Train Fire*, 499 F. Supp. 2d at 451).

Furthermore, the Second Circuit and the District Court considered and appropriately denied Petitioners' meritless arguments that Austria is an inadequate forum. *Geier*, 357 Fed. Appx. at 380 ("Nor are we persuaded that Austria is an inadequate forum by plaintiffs' allegations of corruption and bias."); *id.* at n.2 ("Even taking into

account the voluminous media reports that plaintiffs have attached to their eight motions to augment the record, we are not convinced that Austrian courts are so inherently biased as to render Austria an inadequate forum for plaintiffs' claims. If anything, those reports suggest just how seriously Austria is treating accusations of wrongdoing on the part of experts in the criminal trial arising from this incident."). Indeed, Petitioners' contention that Austria is an inadequate forum is belied by the fact that Petitioners were pursuing actions in Austria at the time of the dismissal of their U.S. claims. *In re Ski Train Fire*, 499 F. Supp. 2d at 447 (The "fact that *all* foreign plaintiffs presently are pursuing actions in Austrian courts arising out of the ski train fire dramatically undercuts any argument that Austria is an inadequate forum.").

Moreover, the Second Circuit correctly found that the District Court did not abuse its discretion by imposing no conditions on the dismissal. Not only were no conditions warranted under the circumstances of this case, but also Petitioners failed to support their argument that conditional dismissal was required and on appeal inappropriately took positions opposite to what they had argued in the District Court. *Geier*, 357 Fed. Appx. at 380-81.

Lastly, Petitioners argue that this case provides the Court with an opportunity to promote uniformity among the lower federal courts, but that is an empty truism. Nearly all cases provide such an opportunity for the Court, and what is missing from the Petition is any persuasive rationale regarding why this case is special. Indeed, the lower courts, including the

District Court and the Second Circuit here, already routinely apply this Court's ample guidance regarding the doctrine of *forum non conveniens*. Petitioners' statement that the Second Circuit's *forum non conveniens* jurisprudence "is not in sync with" that of other circuits is thus incorrect. Pet. at 23 n.11. Each circuit applies the same basic law in deciding whether *forum non conveniens* dismissal is appropriate, and recognizes the federal courts' discretion regarding the question of imposing conditions on any such dismissal.[1] Although Petitioners contend lower courts have reached different outcomes, this reflects the simple fact that application of the doctrine of *forum non conveniens* depends highly on the facts and circumstances of each case and the discretion afforded to the lower courts. *Williams v. Green Bay & Western R. Co.*, 326 U.S. 549, 557 (1946) (emphasizing that "[e]ach case turns on its facts"). The reality is that this is a textbook case for *forum non conveniens* dismissal in which the lower courts properly exercised their discretion. *Sinochem Int'l Co. v. Malaysia Int'l*

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[1] *See, e.g.*, *Interface Partners Int'l Ltd. v. Hananel*, 575 F.3d 97 (1st Cir. 2009); *Delta Air Lines, Inc. v. Chimet, S.p.A.*, 619 F.3d 288 (3d Cir. 2010); *Campania Naviera Joanna SA v. Koninklijke Boskalis Westminster NV*, 569 F.3d 189 (4th Cir. 2009), *cert. denied*, 130 S. Ct. 1066 (2010); *Dickson Marine Inc v. Panalpina, Inc.*, 179 F.3d 331 (5th Cir. 1999); *Barak v. Zeff*, 289 Fed. Appx. 907 (6th Cir. 2008); *Chang v. Baxter Healthcare Corp.*, 599 F.3d 728 (7th Cir. 2010), *cert. denied*, 131 S. Ct. 322 (2010); *de Melo v. Lederle Labs.*, 801 F.2d 1058 (8th Cir. 1986); *Leetsch v. Freedman*, 260 F.3d 1100 (9th Cir. 2001); *Yavuz v. 61 MM Ltd.*, 576 F.3d 1166 (10th Cir. 2009); *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283 (11th Cir. 2009), *cert. denied*, 131 S. Ct. 102 (2010); *MBI Group, Inc. v. Credit Foncier du Cameroun*, 616 F.3d 568 (D.C. Cir. 2010).

Shipping Corp., 549 U.S. 422, 435 (2007). That Petitioners may vehemently disagree with the outcome below does not suffice to make their grievance worthy of this Court's attention.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of *certiorari*.

Respectfully submitted,

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